## UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO

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JAMES E. PERKINS, : CASE NOS. 1:05-cr-00135 : 1:07-cv-00679

Petitioner,

vs. : ORDER AND OPINION

[Resolving 05-135 Doc. Nos. 38, 41-44]

[Resolving 07-679 Doc. No. 1-1]

UNITED STATES OF AMERICA,

:

Respondent.

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## JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Petitioner Perkins, under 28 U.S.C. § 2255, moved this Court to correct his sentence. [Doc. 38.]<sup>1/2</sup> The government opposed. [Doc. 41-1.] This Court then referred Petitioner's motion to Magistrate Judge Limbert. [Case No. 07-679 Doc. 2.]

After conducting a thorough analysis of the Petitioner's motion, Magistrate Judge Limbert recommended that the Court deny the Petitioner's request. [Doc. 48.]

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of a Report and Recommendation to which the parties have made an objection. 28 <u>U.S.C. § 636(b)(1)(C)</u>. Parties must file any objections to a Report and Recommendation within ten days of service. <u>Id.</u> Failure to object within this time waives a party's right to appeal the magistrate

<sup>&</sup>lt;sup>1</sup>/ All references to the docket refer to Case No. 05-135 unless otherwise indicated. The Petitioner moved for relief under § 2255 in his underlying criminal case and also in a new civil complaint. The briefing on this request for relief was all completed on the docket for Case No. 05-135.

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judge's recommendation. FED. R. CIV. P. 72(a); see also Thomas v. Arn, 474 U.S. 140, 145 (1985);

United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). Absent objections, a district court

may adopt the magistrate's report without review. See Thomas, 474 U.S. at 149. Moreover, having

conducted its own review of the parties' briefs on the issue, the Court agrees with the conclusions

of the Magistrate Judge.

In his Report and Recommendation, Magistrate Judge Limbert's Report informed parties' of

the 10 day objection period. [Doc. 48.] Here, more than ten days have passed since Magistrate

Judge Limbert filed his Report and Recommendation. Neither party has objected.

This Court has conducted its own review of the parties' briefs on the issue and agrees with

the conclusions of Magistrate Judge Limbert and adopts the Report and Recommendation as its own.

Therefore, the Court incorporates Magistrate Judge Limbert's findings of fact and conclusions of law

fully herein by reference. Accordingly, the Court denies the Petitioner's § 2255 motion.

For the reasons discussed above, the Court **ADOPTS** the Report and Recommendation of

the Magistrate Judge and **DENIES** the Petitioner's motion to vacate, set aside, or correct his

sentence pursuant to 28 U.S.C. § 2255.

Further, this Court certifies under 28 U.S.C. § 1915(a)(3), that an appeal from this decision

could not be taken in good faith, and that there is no basis upon which to issue a certificate of

appealability. 28 U.S.C. § 2253(c); FED. R. APP. P 22(b).

IT IS SO ORDERED.

Dated: November 20, 2008

James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE

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